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AUG 14 2008

OFFICE OF PETITIONS

In re Application of :
Browning et al. : DECISION ON REQUEST
Application No. 10/077,406 : FOR REVIEW OF
Filed: February 15, 2002 : PATENT TERM ADJUSTMENT
Atty Docket No. BGNB191CPUSDV :

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed on March 4, 2008. Applicants request that the initial determination of patent term adjustment under 35 USC 154(b) be reviewed for accuracy.

The request for correction of the patent term adjustment (PTA) is **GRANTED to the extent indicated.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is 493 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 6, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is five hundred sixty (560) days.

The Office determined a patent term adjustment of five hundred sixty (560) days based on an adjustment for PTO delay of eight hundred (800) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by thirty-two (32) days, ninety-two

(92) days, twenty-two (22) days, and ninety-four (94) days of applicant delay pursuant to 37 C.F.R. § 1.704(b).

Applicants filed the instant "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT" on March 4, 2008. Applicants assert that the patent term adjustment should be reduced by 32 days for the filing of a supplemental amendment, filed on October 26, 2007, subsequent to the filing of the Notice of Appeal filed on September 24, 2007.

Such an amendment filed after the filing of a Notice of Appeal is not a supplemental reply or other paper within the meaning of 1.704(c)(8). Accordingly, a reduction in patent term adjustment for the filing of an amendment, filed on October 26, 2007, after the filing of the Notice of Appeal filed on September 24, 2007, is not warranted.

However, it is further noted that a Notice of Abandonment was mailed on January 21, 2004. A petition to withdraw the holding of abandonment was filed on May 27, 2004. The petition to withdraw the holding of abandonment was granted on July 22, 2004.

37 C.F.R. § 1.704(c)(3) states:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(4) Failure to file a petition to withdraw the holding of abandonment or to revive an application within two months from the mailing date of a notice of abandonment, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date two months from the mailing date of a notice of abandonment and ending on the date a petition to withdraw the holding of abandonment or to revive the application was filed;

Therefore, Applicants should have been assessed delay for the period from March 22, 2004 (the day after the date two months from the mailing date of a notice of abandonment) to May 27,

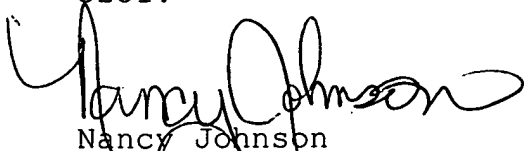
2004 (the date a petition to withdraw the holding of abandonment or to revive the application was filed), or 67 days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **four hundred ninety-three (493) days** (800 days of PTO delay, reduced by 307 (67+32+92+22+94) days of Applicant delay).

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Wednesday


PALM INTRANET

Date: 8/13/2008

Time: 19:12:05

PTA Calculations for Application: 10/077406

Application Filing Date:	02/15/2002	PTO Delay (PTO):	800
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	240
Post-Issue Petitions:	0	Total PTA (days):	493
PTO Delay Adjustment:	-67		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
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74	12/06/2007	MAIL NOTICE OF ALLOWANCE			
73	12/05/2007	ISSUE REVISION COMPLETED			
72	12/05/2007	DOCUMENT VERIFICATION			
71	12/05/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
70	12/04/2007	NOTICE OF ALLOWABILITY			
67	11/13/2007	CORRESPONDENCE ADDRESS CHANGE			
66	10/31/2007	DATE FORWARDED TO EXAMINER			
65	10/26/2007	SUPPLEMENTAL RESPONSE			
64	09/30/2007	DATE FORWARDED TO EXAMINER			
63	09/24/2007	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
62	09/24/2007	NOTICE OF APPEAL FILED		94	59
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60	09/05/2007	CORRESPONDENCE ADDRESS CHANGE			
59	03/22/2007	MAIL FINAL REJECTION (PTOL - 326)			
58	03/19/2007	FINAL REJECTION			
57	12/15/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
56	12/15/2006	REFERENCE CAPTURE ON IDS			
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55	12/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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52	12/15/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
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50	08/18/2006	NON-FINAL REJECTION			
49	06/09/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
48	06/09/2006	REFERENCE CAPTURE ON IDS			
47.7	06/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	45
47	06/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	06/15/2006	DATE FORWARDED TO EXAMINER			
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40	08/25/2005	DATE FORWARDED TO EXAMINER			
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37	08/01/2005	DATE FORWARDED TO EXAMINER			
36.1	07/21/2005	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
36	07/21/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
35	06/23/2005	MAIL RESTRICTION REQUIREMENT	800		-1
34	06/22/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
33	06/06/2005	CASE DOCKETED TO EXAMINER IN GAU			
32	04/25/2005	CASE DOCKETED TO EXAMINER IN GAU			
31	01/21/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
30	01/21/2005	CLAIMS PTO			
28	02/15/2004	PRELIMINARY AMENDMENT			
27	01/21/2005	CASE DOCKETED TO EXAMINER IN GAU			
26	11/05/2004	APPLICATION DISPATCHED FROM OIPE			
25	11/05/2004	APPLICATION IS NOW COMPLETE			
24	09/21/2004	ADDITIONAL APPLICATION FILING FEES			
23	09/21/2004	APPLICANT HAS SUBMITTED A NEW SPECIFICATION TO CORRECT CORRECTED			

		PAPERS PROBLEMS			
22	07/21/2004	CORRECTED PAPER			
21	01/21/2004	WITHDRAW PRE-EXAM ABANDON			
20	01/21/2004	ABANDONMENT -- DURING PREEXAM PROCESSING			
19	07/21/2004	WITHDRAW PUBLICATION/PRE-EXAM ABANDON			
18	07/21/2004	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
17	05/27/2004	PETITION ENTERED			
16	05/27/2004	WORKFLOW INCOMING PETITION IFW			
15	05/27/2004	WORKFLOW INCOMING AMENDMENT IFW			
14	02/11/2003	ABANDONMENT -- DURING PREEXAM PROCESSING			
13	12/19/2003	CORRESPONDENCE ADDRESS CHANGE			
12	07/17/2003	CORRESPONDENCE ADDRESS CHANGE			
11	07/18/2003	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
10	12/09/2002	CORRECTED PAPER			
9	12/03/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
8	02/15/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
3	03/27/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	03/04/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/15/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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